

## **REMARKS**

As a preliminary matter, Applicants appreciate the Examiner's acknowledgment of allowable subject matter. Applicants have amended claim 8 to include aspects of claim 17.

The Examiner has objected to informalities in Claims 7, 11, 12 and 14. Applicants have amended claims 11, 12 and 14 to include the changes suggested by the Examiner. The objection as applied to claim 7 is moot as claim 7 has been canceled without prejudice.

Claim 1, 3-5, 8-10, 15 and 18 stand rejected under 35 U.S.C. 102(b) as being anticipated by Fallin (U.S. Patent No. 5,108,452). The rejection of claims 8-10 and 15 is moot as claim 8 has been amended to include aspects of claim 17 acknowledged as containing allowable subject matter. Applicant has rewritten claims 1, 3-5 and 18 as new claims 21-29 and respectfully traverses the rejection.

Fallin discloses a modular hip assembly including a femoral head 27, a plurality of extension members 45 of varying length. The extension member 45 is mounted to the femoral head 27 using an impact driver. See col. 7, lines 63-65.

Fallin fails to disclose or suggest, among other elements, the plurality of spacers of varying thicknesses or the threaded bore of the femoral head of the Claims 21-24 of the present invention. Consequently, Fallin fails to disclose or suggest the feature of claim 21 wherein at least one spacer is inserted into the threaded bore of the femoral head wherein the neck is adapted to extend outwardly from the femoral head in various lengths, wherein each length corresponds to the combined thickness of the inserted spacer(s).

Like Claims 21-24, Claims 25-28 also recite the use of spacers, however in Claims 25-28 the neck includes a shoulder, and the spacer(s) are interposed between the shoulder and the femoral hip stem. Again, the neck is adapted to extend outwardly from the femoral head in various lengths, wherein each length corresponds to the combined thickness of the spacer(s).

Again, Fallin fails to disclose or suggest the use of spacers or the recited shoulder, let alone the recited manner of mounting the spacers on the shoulder.

Claim 29 recites a biasing member interposed between the neck and the femoral head biasing the neck away from the femoral head, wherein the neck is adapted to extend outwardly from the femoral head in various lengths by variably compressing the biasing member.

Fallin fails to disclose or suggest the recited biasing member.

For at least these reasons, Claims 21-29 are patentable over Fallin.

Claims 1-5, 8, 13, 14 and 17 stand rejected under 35 U.S.C. 102(b) as being anticipated by Rao (U.S. Publication No. 2001/0051831). The rejection of claims 8, 13 and 14 is moot as claim 8 has been amended to include aspects of claim 17 acknowledged as containing allowable subject matter. Applicants assume that the rejection of claim 17 is a typographical error since the Examiner acknowledges that claim 17 contains allowable subject matter on page 5 of the office action. Applicant has rewritten claims 1-5 as new claims 21-29 and respectfully traverses the rejection.

Rao discloses a modular hip implant including a femoral ball member 22, a coupling member 26, and a screw-like biasing member 30. Rao fails to disclose or suggest the plurality of spacers having different thicknesses, a feature of claims 21-28.

For at least this reason Claims 21-28 are patentable over Rao.

Rao fails to disclose a biasing member interposed between the neck and the femoral head, biasing the neck away from the femoral head, a feature of Claim 29. Instead, Rao discloses a plurality of embodiments having a biasing member interposed between the hip implant 40 and the coupling member 26, biasing the coupling member 26 from the hip implant 40 (FIGs. 4A, 5A, 5B, 5C, 5D, and 5E).

For at least this reason Claim 29 is patentable over Rao.

Claims 6, 7, 11, 12, 19 and 20 stand rejected as being unpatentable over Fallin. The rejection as applied to claims 21-29 is moot in view of the reasons provided above with respect to the 102 rejection in view of Fallin which are repeated herein in their entirety.


It is believed that the above Remarks represent a complete response to the Office Action and that the Application is now in condition for allowance, and such favorable determination is requested.

In the event Applicants have overlooked the need for an extension of time or payment of fee, Applicants hereby petition therefore and authorizes that any charges be made to Deposit Account No. 50-2779, ZIMMER TECHNOLOGY, INC.

If any questions regarding this Application should arise, the Examiner is encouraged to contact the undersigned.

Respectfully submitted,

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